

REMARKS

Applicant's invention, as defined by pending claims 1-6, 11, 13-14, and 17-19, as amended, provides in one aspect a surgical sponge comprising three substantially spherical radiopaque markers, the markers being closely grouped and proximate to one another. Advantageously, radiographic examination of a surgical sponge having this structural arrangement results in an image that includes a distinctive, visually recognizable shape, regardless of the direction of the impinging x-ray beam.

In particular, the surgical sponge disclosed by present claims 1-6, 11, 13-14, and 17-19 includes three closely proximate, substantially spherical radiopaque markers – making their detection instantly recognizable and detectable, even without the careful scrutiny of a trained radiologist. The radiographic “signature” created by the grouping of three substantially spherical markers is an instantly recognizable indication that there is a retained sponge inside the patient. By way of comparison, the radiopaque markers taught by the prior art can easily be overlooked or even mistaken for something else because they do not consist of a unique shape or design. Therefore, unlike the prior art surgical sponges, applicant's surgical sponge, as defined by present claims 1-6, 11, 13-14, and 17-19 is readily and reliably detectable if inadvertently left within a surgical wound. As a result, the retained sponge can be removed by a surgical procedure that can be carried out quickly. Quick removal, in turn, virtually precludes the extensive discomfort, trauma, and possibly fatal consequences that might otherwise ensue before the problem is diagnosed and treated.

Claims 8-10, 12, and 15-16 were previously canceled.

Claim Rejections – 35 USC § 103

Claims 1-6 and 17 were rejected under 35 USC 103(a) as being unpatentable over US Patent No. 6,777,623 to Ballard in view of US Patent No. 3,911,922 to Kliger.

Regarding claims 1-6, the Examiner has argued that Ballard teaches a surgical sponge (311) comprising a spherical radiopaque marker (301), the marker being fixed to the sponge and made of barium sulfate. The spherical marker is said to provide a distinctive, visually recognizable shape.

Acknowledging that Ballard does not teach a plurality of markers, the Examiner has further cited Kliger, which is said to teach a surgical sponge having three markers (12) that are proximate each other. In particular, the Examiner has pointed to items 12 in Fig. 1 of Kliger and references col. 3, lines 33-45 as purportedly teaching that multiple markers increase the surface area that can be detected by an x-ray.

Applicant respectfully disputes the Examiner's contention that Kliger's items 12 can be compared in any way to applicant's spherical, radiopaque markers. Features 12 of Kliger are defined at col. 3, lines 40-43: "There are provided on the surface of gauze layer 4 cut polyvinyl chloride fibers 10 having dispersed throughout finely divided barium sulfate designated as 12."

Applicant specifically traverses the Examiner's contention that "The multiple markers increase the surface area that can be detected by an X-ray." *See*

page 3, lines 3-4 of the November 29 Office Action (citing Kliger's col. 3, lines 33-45). To the contrary, it is respectfully submitted that the Examiner's characterization reflects the operation of hindsight reconstruction that goes well beyond the plain meaning of the Kliger specification. At best, the x-ray image that a Kliger sponge provides merely includes a plurality of the shadows resulting from individual, somewhat radiopaque threads, not substantial, two-dimensional areas of x-ray shadowing as the Examiner seems to indicate. Moreover, even if the Examiner's reading were correct, applicant maintains that the Examiner has not provided reason to believe that the increase in surface area would, in fact, provide any materially increased detectability. Absent reasonable expectation of improved detectability, the Examiner's proposed motivation is submitted to be unavailing.

Applicant further submits that Kliger does not teach the specific presence of three marker elements. Rather, Kliger teaches a much larger and indeterminate number of elements. Significantly, the x-ray opacity of the Kliger elements is provided by finely divided powders incorporated in large fibers. Col. 3, lines 2-5. These elements do not have any determinate number or shape; thus, they inherently cannot contribute to providing an x-ray image having a distinctive, visually recognizable shape, as required by instant claims 1, 13, and 14.

It is still further submitted that the multiple, randomly positioned fibers 10 in Kliger's sponge are disposed in a way that is completely antithetical to applicant's "three substantially spherical radiopaque markers" that are "closely

grouped and proximate to one another.” Even if Kliger were taken to disclose three markers, nothing in the disclosure suggests any form of grouping or an arrangement that is substantially fixed both in spacing and in orientation. Instead, the disposition is purely random, and certainly not a close grouping in proximity.

More specifically, there is no disclosure or suggestion in Ballard or Kliger, whether taken individually or in combination, for a surgical sponge with a plurality of radiopaque markers, wherein the radiopaque markers are disposed in a relationship that is substantially fixed both in spacing and in orientation. It is submitted that applicant’s surgical sponges, as recited by amended claims 1-6 and 17, are more readily discoverable by a radiologist viewing an X-ray of the patient’s body because of there being a plurality of markers disposed in a relationship that is substantially fixed both in spacing and in orientation.

Applicant maintains that if the Ballard reference were to be modified by operating the system therein using any sponge of the type provided by Kliger, the Ballard system would be significantly impaired, if not rendered completely inoperative, for its intended purpose.

More specifically, Ballard discloses a system that relies on the use of surgical sponges that include a single radiopaque object. *See*, e.g., claim 23 and col. 6, lines 15-30, wherein Ballard discloses that a sensor of the apparatus detects the number of radiopaque objects in the surgical sponges by detecting the scanning beam generated by a radiation source; Ballard further discloses that a

computing system calculates the specific number of sponges in the container by counting the number of radiopaque objects.

MPEP 2143.01 states that a proposed modification cannot render the prior art unsatisfactory for its intended purpose, in which case, there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). The intended purpose of the apparatus disclosed by the Ballard reference is to be able to count the exact number of surgical sponges that are placed within a container. The Ballard device is intended to count the exact number of surgical sponges within the container by counting the individual number of radiopaque markers. See Ballard col. 6, lines 15-30. Therefore, in the present case, the Ballard reference does not teach or suggest a device for counting surgical sponges wherein each of the surgical sponges has an indeterminate plurality of radiopaque markers, as called for by claims 1-6 and 17, as amended. Because Ballard requires that each surgical sponge has only one radiopaque marker in order to achieve its intended purpose of counting the exact number of surgical sponges that are placed within a container, it could not be properly modified so that each of the surgical sponges has a plurality of radiopaque markers. A modification to incorporate the Kliger sponges, each having an indeterminate number of marker elements, would even further defeat the Ballard purpose. That is to say, it is intrinsically impossible to count Kliger sponges by sensing a number of marker elements, since there is no fixed association specifying how many marker elements are present in each

Kliger sponge. In accordance with *Gordon, supra*, it is submitted that the combination proposed by the Examiner is improper.

With respect to claim 17, the Examiner has asserted that Kliger teaches that the three markers are “contiguous.” Applicant traverses this contention. Clearly, the word “contiguous” is never used by Kliger. The Examiner has relied on meanings of the term “contiguous” purportedly given by the Encarta and Free Dictionary websites, and has pointed to the requirement of MPEP §2111.01 that words of a claim must be given their “plain meaning” unless such meaning is inconsistent with the specification.

However, applicant maintains that the Examiner has viewed the Encarta and Free Dictionary definitions in an impermissibly restrictive manner that reflects the untenable and impermissible operation of hindsight. Significantly, both sources also include a meaning the Examiner has pointedly disregarded. Encarta includes “continuous: connected together so as to form an unbroken sequence in time or an uninterrupted expanse in space,” while the Free Dictionary includes, as the first definition, “sharing an edge or boundary: touching.” The context of applicant’s specification clearly indicates that the excluded sense is fundamental to applicant’s usage.

Other dictionaries also emphasize this aspect of “touching,” which is inherent in the very etymology of the term “contiguous” from its Latin-language roots. For example, *Merriam Webster’s Third International Dictionary-Unabridged* (1993) gives, in much more detail, the following first meanings of contiguous: “(a) touching along boundaries often for considerable distances :

adjacent; (b) next or adjoining with nothing similar intervening; (c) nearby, close : not distant; (d) continuous, unbroken, uninterrupted : touching or connected throughout.” (exemplary usages omitted). *Id.* at 492.

Applicant respectfully notes that MPEP §2111 cites the Federal Circuit’s *en banc* decision in *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005) (*en banc*), *cert. denied*, 126 S. Ct. 1332 (2006), requiring that during USPTO examination, claims be “given their broadest reasonable interpretation consistent with the specification” (emphasis added).

While applicant recognizes that terms in claims being examined are to be given a broad reading, it is submitted that such breadth is not without limit, and that the Examiner’s assertions regarding “contiguous” are not tenable in light of what would be understood by a person having ordinary skill in the art reading the instant specification in its entirety. The *Phillips* court stated that “The claims, of course, do not stand alone. Rather, they are part of ‘a fully integrated written instrument,’ consisting principally of a specification that concludes with the claims. For that reason, claims ‘must be read in view of the specification, of which they are a part.’ ...The pertinence of the specification to claim construction is reinforced by the manner in which a patent is issued. The Patent and Trademark Office determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction ‘in light of the specification as it would be interpreted by one of ordinary skill in the art.’ *Id.* at 35 USPQ2d 1327-29 (citations omitted).

In the present instance, applicant maintains that “closely grouped and proximate” must be interpreted in light of the teaching of the specification at page 4, lines 8-11, that “The marker has a high radiographic density and a distinctive shape, whereby the marker produces an x-ray image with high contrast and a shape that is readily recognizable and differentiated from the images produced by other items and structures commonly seen in x-rays of post-operative patients.” Applicant maintains that a close grouping of three spherical elements, as now recited by present independent claims 1, 13, and 14, provides an especially preferred form of distinctive shape.

Applicant further points to the teaching of the specification in which an embodiment within the scope of present claims 1, 13, and 14 is said to provide multiple marker elements that are shown in Fig. 10 as “a plurality of closely proximate or contiguous spheres.” See page 15, line 24 through page 16, line 1. Claim 17 must further limit the subject matter of claim 1, from which it is dependent. Claim 1 calls for three substantially spherical radiopaque markers that are “closely grouped and proximate to one another.” Claim 17 requires the markers to be “contiguous.” Accordingly, it is submitted that the doctrine of claim differentiation alone requires that the term “contiguous” be understood to mean a spatial relationship that is more limiting than “closely grouped and proximate,” thereby precluding the Examiner’s selection of the least restrictive dictionary meaning instead of a more tenable dictionary meaning that implicates the aspects of “touching,” “sharing an edge or boundary,” and “connected together.”

The term “contiguous” recited in claim 17 finds direct correspondence in the specification at page 15, line 24, to page 16, line 1, which describes marker 48 of Fig. 10 as comprising “a plurality of closely proximate or contiguous spheres 50.” Such a situation is clearly congruent with the foregoing dictionary definition cited by applicant. Far from arising in claim 17 from a lexicographic vacuum, the term “contiguous” has a clear antecedent context in both the specification and the drawings, and from base claim 1. Accordingly, it is submitted that any arbitrary selection of dictionary definitions is improper, first recourse being instead to the teaching of the specification taken as a whole. Instead, any definition used in claim construction must comport with the full specification context. By virtue of the dependency of claim 17 from claim 1, the use of “contiguous” must be construed in a manner that further specifies and restricts claim 1’s configurational requirements that the markers be “closely grouped and proximate to one another” and “disposed in a relationship that is substantially fixed both in spacing and in orientation.” In addition, the configuration must be such as to produce an x-ray image having a distinctive, visually recognizable shape.

Applicant further submits that the Examiner’s expansive reading of “contiguous” is not consistent with provisions of MPEP §2111.01 (III), including the case law cited therein. Notably, that section requires that “If extrinsic reference sources, such as dictionaries, evidence more than one definition for the term, the intrinsic record must be consulted to identify which of the different possible definitions is most consistent with applicant’s use of the terms.” [citing

Brookhill-Wilk 1, 334 F. 3d at 1300, 67 USPQ2d at 1137; and *Renishaw PLC v. Marposs Societa" per Azioni*, 158 F.3d 1243, 1250, 48 USPQ2d 1117, 1122 (Fed. Cir. 1998) ("Where there are several common meanings for a claim term, the patent disclosure serves to point away from the improper meanings and toward the proper meanings.")] Applicant respectfully maintains that the present record contains no evidence of any analysis of the disclosure to determine which dictionary meanings are and are not, appropriate for applicant's terminology.

Acknowledging the failure of Ballard and Kliger to disclose expressly the specific x-ray density or size of the markers, as required by present claims 1, 13, and 14, the Examiner has argued that mere changes in size, weight or shape are not sufficient to patentably distinguish an invention over the prior art. He has particularly cited: *In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955) (Claims directed to a lumber package "of appreciable size and weight requiring handling by a lift truck" were held unpatentable over prior art lumber packages which could be lifted by hand because limitations relating to the size of the package were not sufficient to patentably distinguish over the prior art.); *In re Rinehart*, 531 F.2d 1048, 189 USPQ 143 (CCPA 1976) ("mere scaling up of a prior art process capable of being scaled up, if such were the case, would not establish patentability in a claim to an old process so scaled." 531 F.2d at 1053, 189 USPQ at 148.); *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) (The court held that the configuration of the claimed disposable plastic nursing container was a matter of choice which a person of ordinary skill in the art would

have found obvious absent persuasive evidence that the particular configuration of the claimed container was significant).

Applicant respectfully traverses these arguments and submits that the Examiner has not made out a *prima case* of obviousness. Applicant that submits the subject matter of claims 1-6 and 17 does not merely represent an increase in the density and size of a marker and further maintains that these claims clearly define over Ballard and Kliger. Namely, claims 1-6 and 17, as amended, call for a surgical sponge comprising (i) three substantially spherical radiopaque markers; (ii) said markers being closely grouped and proximate to one another; (iii) each of said markers having an x-ray density equivalent to at least about 0.1 g/cm² of BaSO₄; and (iv) said radiopaque markers being disposed in a relationship that is substantially fixed both in spacing and in orientation. As a result of this configuration, the markers produce an x-ray image having a distinctive, visually recognizable shape. As a result, the particular configuration recited by applicant's claims is no mere design change in size, weight, or shape. Rather, the present configuration presents a difference in kind, namely the provision of a distinct shape recognizable even by a minimally skilled artisan. By way of contrast, prior art surgical sponges did not enjoy this qualitative difference.

Applicant particularly points to a central factual predicate of *Dailey*, namely the required absence of persuasive evidence that a particular configuration was significant, for a determination of obviousness to be warranted. However, in the present instance, applicant has provided just such

evidence, namely, the recognition that a unique configuration of radiopaque markers provides a signature that markedly enhances the ability of a diagnostician to recognize the presence of a retained surgical article. As a result, the present configuration is no “mere” change in shape. Rather, the present configuration provides a detection capability that is surprising and unexpected, even in light of the references applied.

Other subsequent cases have confirmed that in this context the showing of a solution to a stated problem is significant and results in patentable moment being conveyed by a recited shape that solves the problem. (‘The shape of the neck recited in claim 1 is significant in that it solves a stated problem. Under these circumstances and given the foregoing deficiencies in the examiner’s prior art evidence, the shape of the neck recited in claim 1 cannot be baldly dismissed as an obvious matter of design choice.’ *Ex Parte Moore*, 1996 WL1796237 2 (B.P.A.I. 1996)). Moreover, a reading of *Dailey* as establishing a *per se* rule has been expressly prohibited. (‘The examiner, instead, merely relies upon a *per se* rule that mere changes of shape are obvious. As stated by the Federal Circuit in *In re Ochiai*, 71 F.3d 1565, 1572, 37 USPQ2d 1127, 1133 (1995), “reliance on *per se* rules of obviousness is legally incorrect and must cease.”’ *Ex Parte Hall*, 2001 WL1057294 3 (B.P.A.I. 2001).)” Applicant maintains that the Examiner’s reasoning falls into just such a hindsight trap.

It is submitted that applicant’s surgical sponges, as provided by present claims 1-6 and 17, are more readily and reliably recognizable by a radiologist viewing an X-ray of the patient’s body. The presence of three substantially

spherical markers, closely grouped to one another, and disposed in a relationship that is substantially fixed both in spacing and in orientation, results in a unique image that would be highly unlikely to occur under other circumstances attendant a surgical procedure.

Applicant further submits that the substantially spherical shape to the radiopaque markers is significant to the present invention, as claimed. Namely, as stated hereinabove, the substantially spherical configuration of the three closely grouped radiopaque markers allows them to be easily detected on an X-ray film taken of a patient. The substantially spherical shape is a preferred shape because a sphere has the same cross section view from all angles; therefore, no matter what the angle and/or configuration of the sponge when the patient is X-rayed, a spherical image will be easily recognized, especially when a close and proximate group of three substantially spherical markers are contained within the surgical sponge, as required by present claims 1-6, 11, 13-14, and 17-19.

In order to expedite prosecution, submitted herewith is a Declaration Under 37 CFR 1.132 made by the inventor in further support of the present contentions. In this Declaration, Dr. Fabian, an experienced, board-certified radiologist, avers that a surgical sponge having the structure of either the Ballard or the Kliger sponge would not produce an x-ray image having a distinctive, visually recognizable shape, as required by present claims 1, 13, and 14, and claims 2-6, 11, and 17-19 dependent thereon. He indicates that the single spherical radiopaque object taught by Ballard in isolation would likely be confused with other apparently spherical objects, including both foreign bodies

such as buckshot, treatment items intentionally left in a patient, and items likely to overlie a postoperative surgical patient. He additionally avers that the relatively low radiological density of the threads in the Kliger sponge fails to solve the known problem that images of these threads are frequently burned out in heavily exposed x-ray films, rendering them difficult or impossible to visualize, and provides experimental observations to establish that in circumstances within the realm that a skilled practitioner would expect to encounter in clinical practice, barium sulfate threads or strips commonly used in existing surgical sponges are “burned out,” i.e., not visible in heavily exposed x-ray films, whereas radiologically dense objects may readily be visualized. Dr. Fabian’s declaration concerning these aspects accords with teaching in the specification, e.g. at page 13, line 15, through page 14, line 13.

Dr. Fabian’s declaration provides experimental evidence of the “burn out” of a barium sulfate-impregnated strip in a conventional surgical sponge under exposure conditions in which an image of three spherical BBs disposed in a generally triangular, substantially abutting configuration remained clearly perceptible. In particular, the declaration includes Figs. 1 and 2, which are reproductions of x-ray images obtained with Dr. Fabian as the subject. A conventional surgical laparotomy sponge with a radiopaque, barium sulfate-impregnated fabric strip was modified to further include a small pouch containing three copper-clad, steel BBs of the type used with an air rifle, and positioned in the aforementioned triangular configuration. The modified sponge was placed flat and unfolded on Dr. Fabian’s abdomen and anterior-posterior x-

rays were obtained using conventional medical x-ray equipment and film, under a variety of exposure conditions. Fig. 1, obtained under a relatively low exposure, depicts normal anatomical features, including bony spinal vertebrae, pelvis, and femur, as well as an image of the impregnated fabric strip and the BBs. However, Fig. 2, taken at an exposure heavy enough to burn out both the most readily imaged anatomical features and the impregnated strip, still contained an easily recognized image of the BBs. Even in this most favorable configuration of the sponge, the BBs gave a distinctive image easily seen by persons without extensive radiological training and experience. Under the more realistic conditions like encountered in a patient with a retained sponge that is folded, crumpled, or similarly deformed, the distinctive BB image would be far more likely to be detected, thereby improving the likelihood that the sponge would be located and removed quickly, minimizing trauma to the patient and markedly improving the prognosis for full recovery. Dr. Fabian's declaration establishes that on the other hand, a conventional sponge would be far more difficult to locate under these conditions, greatly impairing the speed and efficacy of attempts to remedy problems occasioned by the retained sponge.

Dr. Fabian further avers that the sponge-counting system taught by Ballard is structured in a manner that inherently precludes its use in detecting a sponge while it is present in a surgical patient. Specifically, the only configuration provided by Ballard impinges an x-ray beam onto a container appointed to receive surgical sponges after they are used in a procedure. Dr. Fabian also avers that the Ballard sponge-counting system inherently would be inoperative if used

in connection with sponges of the type provided by Kliger or with sponges modified in the manner proposed by the Examiner based on the combination of Ballard and Kliger to include multiple radiopaque elements. Such a system would be incapable of yielding a definite count of discarded sponges, because there would not be a definite association linking the number of radiopaque elements present with the number of sponges in the disposal receptacle.

In view of the Declaration under 37 CFR 1.132 and foregoing remarks, it is submitted that claims 1-6 and 17 are not obvious over Ballard and Kliger. Accordingly, reconsideration of the rejection of claims 1-6 and 17 under 35 U.S.C. § 103(a) as being unpatentable over Ballard and Kliger is respectfully requested.

Accordingly, reconsideration of the rejection of claim 1-6 and 17 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Ballard and Kliger is respectfully requested.

Claim 11 was rejected under 35 USC § 103(a) as being unpatentable over Ballard and Kliger as applied to claims 1-6 and 17 above, and further in view of Ishikawa et al. (US 6,366,206; hereinafter "Ishikawa").

Ishikawa et al. disclose a method and apparatus for attaching one or more transponders to medical and non-medical products to tag respective ones of the products with identifying data contained in a memory of the transponders. The one or more transponders each include a memory containing the corresponding identifying data which is emitted by the respective transponder in response to an

electromagnetic signal emitted externally of the transponder. The identifying data corresponds to at least one of the respective one or more transponders and a respective product for tagging. The one or more transponders are attached to respective ones of the products to tag the products with the corresponding identifying data.

Applicant respectfully submits that nothing in Ishikawa et al. cures the lack of disclosure or suggestion in Ballard and Kliger of the configuration of radiopaque marker elements delineated by amended claim 1, from which claim 11 depends. The Examiner has not pointed to any subject matter in Ishikawa et al. that pertains to the features of claim 1. Applicant thus maintains that claim 11, being dependent from claim 1, is thus patentable for at least the same reasons set forth above.

Further, applicant respectfully submits that the Examiner has not established a *prima facie* case of obviousness for claim 11. In particular, the Examiner has not pointed to any basis in the prior art to suggest the claimed combination of the two types of marking technologies, as called for by present claim 11. Instead, applicant submits that such combination is only found by hindsight reasoning and/or applicant's own disclosure. *See* MPEP 2142 *et seq.* Significantly, the combination of the two types of marking technologies provides a synergistic improvement in the probability that a surgical item is detected before it causes serious bodily harm not recognized heretofore.

Accordingly, reconsideration of the rejection of claim 11 under 35 USC §103(a) as being unpatentable over Ballard and Kliger in view of Ishikawa et al. is respectfully requested.

Claims 13, 14, 18, and 19 were rejected under 35 USC §103(a) as being unpatentable over Ballard and Kliger as applied to claims 1-7 above, and further in view of *Uncommon Peril of Forgotten Surgical Tools*, Denise Grady, The New York Times, Jan. 21, 2003 (hereinafter "*Uncommon Peril*").

The Examiner acknowledges that Ballard and Kliger do not disclose expressly disclose the steps of x-raying a patient and removing a surgical sponge thereafter. However, the Examiner states that *Uncommon Peril* teaches that a patient suspected of having a surgical sponge or other implement having a marker inside them can be x-rayed and if the implement is found to be there, it can be removed.

Applicant respectfully submits that present claims 13, 14, 18, and 19, as amended, patentably define over Ballard and Kliger in view of *Uncommon Peril*. Applicant respectfully submits that the arguments set forth above in connection with the rejection of claims 1-6 and 17 over Ballard and Kliger apply with equal force to claims 13, 14, 18, and 19. Clearly, *Uncommon Peril* does not pertain to any configuration of radiopaque elements comprising three closely grouped spherical elements, and so, even in combination, does not cure the deficiencies of Ballard and Kliger delineated above. Applicant thus maintains that there is no prior art that discloses or suggests a method of detecting a surgical sponge within

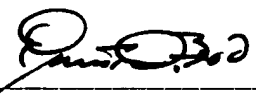
a surgical patient, said surgical sponge comprising three substantially spherical radiopaque markers, said markers being closely grouped to one another, each of said markers having an x-ray density equivalent to at least about 0.1 g/cm² of BaSO₄, said radiopaque markers being disposed in a relationship that is substantially fixed both in spacing and in orientation, and said method comprising the steps of: (a) obtaining at least one x-ray of at least a portion of said patient likely to contain said radiopaque markers; and (b) examining said x-ray to detect and locate an image of said sponge.

Accordingly, reconsideration of the rejection of claims 13, 14, 18, and 19 under 35 USC §103(a) as being unpatentable over Ballard and Kliger in view of *Uncommon Peril* is respectfully requested.

CONCLUSION

In view of the Declaration under 37 CFR 1.132 and the remarks set forth above, it is respectfully submitted that the present application is in allowable condition. Reconsideration of the rejection of present claims 1-6, 11, 13-14, 17-19, and allowance of the present application are earnestly solicited.

Respectfully submitted,
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